



The following constitutes
the order of the court. Signed January 25, 2018

A handwritten signature in black ink, reading "Charles Novack", is positioned above the printed name.

Charles Novack
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

TONY DONG XING FU,
Debtor.

Case No. 17-41205 CN

Chapter 7

DEMAS WAI YAN, THAI MING CHIU,
and LEGAL RECOVERY, LLC

Plaintiffs,
vs.

TONY FU,

Defendant.

Adversary No. 17-04056

**ORDER HOLDING PLAINTIFF DEMAS
YAN IN CONTEMPT AND ORDER
GRANTING IN PART AND DENYING
IN PART DEFENDANT'S MOTION TO
DISMISS**

Plaintiff Demas Yan is subject to a vexatious litigant order which bars him from filing any action against Defendant Tony Fu in the United States Bankruptcy Court for the Northern District of California. Judge Carlson (now retired) signed the "Order Determining Demas Yan To Be A Vexatious Litigant" in the "Demas Yan v. Tony Fu, Stella Chen, Wei Suen, Bryant Fu, and Crystal Lei" adversary proceeding, A.P. 12-3129. The vexatious litigant order (a copy of which is an exhibit to Fu's declaration in support of his motion to dismiss) was entered on December 23, 2013, and it expressly prohibits Yan from filing any action against Fu in this court absent prior approval of this court. Yan did not request this court's approval before filing this adversary proceeding. Accordingly, this court issued an Order to Show Cause why it should not hold Yan in contempt for violating the vexatious litigant order, and why this court should not dismiss all of his claims for

1 relief in this adversary proceeding. Yan filed a response to the Order to Show Cause on January 8,
2 2018, and the court held a hearing on the response on January 22, 2018.

3 For the reasons stated on the record, the Court finds that the Plaintiff's response to the Order
4 to Show Cause was inadequate, and, as a result, the Court holds Demas Yan in contempt of Judge
5 Carlson's vexatious litigant order. The Defendant spent considerable time making the Court aware
6 of Judge Carlson's order, and Yan is therefore ordered to pay Fu \$500 in good funds as a sanction by
7 **February 1, 2018.** Additionally, Demas Yan is dismissed as a party to all claims in this adversary
8 proceeding, except for his §523(a)(6) claim against Fu. The Court finds that it would have granted
9 Yan leave to pursue his §523(a)(6) claim -- which involves acts that allegedly occurred after Judge
10 Carlson issued the vexatious litigant order -- had Yan followed the procedures outlined in Judge
11 Carlson's order and sought leave of the Court to commence an adversary proceeding. Therefore,
12 Plaintiff Yan may continue to litigate his §523(a)(6) claim against Fu.

13 Furthermore, the Court grants the Defendant's motion to dismiss under Federal Rule of
14 Bankruptcy Procedure 7012 in part and denies the motion in part. The Court grants Fu's motion to
15 dismiss as to the Plaintiffs' claims for relief on behalf of Sierra Point Lumber under Bankruptcy
16 Code §523(a)(2) and §523(a)(4) with prejudice for the reasons stated on the record. The Plaintiffs'
17 adversary complaint does not provide a basis for standing to assert claims on behalf of Sierra Point
18 Lumber and as such, does not state a plausible claim for relief under Federal Rule of Civil Procedure
19 12(b)(6). However, the Court denies the Defendant's motion to dismiss as to all other claims by
20 Plaintiffs Thai Ming Chiu and Legal Recovery, LLC. For the reasons stated on the record, the Court
21 finds that Plaintiffs Thai Ming Chiu and Legal Recovery, LLC have asserted their standing to litigate
22 the claims detailed in the adversary complaint to the extent that the claims are plausible claims for
23 relief under Rule 12(b)(6) and Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atlantic Corp. v.
24 Twombly, 550 U.S. 544 (2007).

25 ***** END OF ORDER *****
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1 A.P. No. 17-04056 CN

2 **COURT SERVICE LIST**

3 Tony Dong Xing Fu
4 5813 Geary Blvd, PMB 188
5 San Francisco, CA 94121

6 Other recipients are ECF participants.
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